

**Madison County Board of Education**

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Richmond, KY 40475

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June 18, 2012

Marlene H. Dortch, Secretary

Federal Communications Commission

Office of the Secretary

445 12th Street, SW

Washington, DC 20554

**Petition for Reconsideration**

Per 47 C. F. R. § 1.106

This is a Petition for Reconsideration of DA No. 12-796, released May 22, 2012 for Proceeding 02-6. Madison County Schools (MCS) request that the decision be overturned and a Form 471 Filing Window Waiver and FRN split be granted for FCC Form 471 Number 822447, FRN 2239596 allowing USF reimbursement in the pre-discounted amount of \$598,752.00 at a 65% discount for a total funding commitment request of \$389,188.80 for funding year 2011. Below you will find new facts for your consideration.

**Special Circumstance #1: - New facts**

**Form 471 was filed late due to delays that were caused by circumstances beyond our control.**

This is additional evidence to the original waiver request.

A. The lowest and best bidder, Time Warner Cable (TWC) refused to sign a contract at the bid price two days before the Form 471 Filing Window closed.

- i. The service was advertised and bids were accepted and evaluated per E-Rate regulations and Kentucky Model Procurement. The bids were evaluated on February 25, 2011 and TWC was selected as the lowest and best bid. Between February 25<sup>th</sup> and March 22, 2011 the legal departments of TWC and MCS worked to finalize contract terminology. On **March 22, 2011 (two days before the window closed)** TWC notified MCS they would not sign a contract at the original bid price and instead demanded a price increase from the original bid price of \$499,200 per year (\$2,600 per school) to \$1.44 million per year (\$7,500 per school) which would have been approximately triple their original bid price.
- ii. TWC notified MCS on December 14, 2010 that the current Gigabit Ethernet Service contract would not be renewed and service would cease July 1, 2011.

B. The only other bidder, Unite Private Networks required a 12 to 18 month build out period which would leave MCS without Gigabit Ethernet Service for a minimum of one year.

- i. MCS received bid responses from two Service Providers for Gigabit Ethernet service, TWC and Unite Private Networks. Unite Private Networks offered the service at a rate of \$756,876 annually. However, they proposed a 39.62 mile build out of fiber optic cabling

that would take 12-18 months to complete. When TWC tripled their bid price, we were unable to award to the second bidder as they could not provide service by July 1, 2011. **There were no Service Providers that could provide connectivity to all 16 MCS sites by July 1, 2011 except TWC.**

- C. The loss of Gigabit Ethernet service on July 1, 2011 would have been a catastrophic event that could not be permitted to occur. If service was allowed to lapse, the following MCS systems would not be operational: telephones (VoIP Phone System), email, payroll, accounts payable, accounts receivable, student information system, access to instructional software and data, and internet access. **In essence, the school district would be unable to conduct school business for the students, parents, teachers, and administrators of Madison County Kentucky.**
- D. Before the Form 471 Filing Window closed MCS contacted James Bachtell at the FCC, filed the original Window Waiver, and contacted USAC Waste, Fraud, and Abuse attempting to avoid wasteful spending.
- i. MCS could have signed a contract with TWC and filed a Form 471 in the Filing Window at the \$1.44m annual rate. This would have obligated USAC to \$936,000 and MCS to \$504,000 for Digital Transmission Service, Fiber Optic, Gigabit Ethernet for Year 2011 if the E-Rate application was approved. If the E-Rate application was not approved it would have obligated MCS to the full \$1.44m. In order to compensate for the budget shortfall caused by the increased cost of service, MCS would have found it necessary to terminate over 30 teachers. **Instead we deemed it to be in the public's best interest to request a Window Waiver that would allow MCS time to find a Service Provider that could provide the same or better service at a reasonable rate for both USAC**

**and MCS. As a result of our diligence, we were able to save USAC approximately \$546,811.20 and MCS \$294,436.80 resulting in a total savings to the public of \$841,248 annually.**

- E. Finally on May 1, 2011, after the Telco Service Providers performed a detailed review of Madison County plats showing existing fiber optic cabling, pole right-of-ways, easements, and railroad crossings, etc., it was determined that Windstream and AT&T working together could build out service to the sites. A "meet point" would need to be constructed between the Windstream data network and the AT&T data network. Service could start on October 1<sup>st</sup>, 2011. Service would be procured thru the Kentucky State Master Contract for Gigabit Ethernet Service currently awarded to KIH2 (a group of Telco providers including Windstream and AT&T). This contract was advertised on Form 470 Number 934290000498378 and was awarded by the Commonwealth of Kentucky on 2/1/2005 with a contract expiration date of 6/30/2013. **Although MCS was able to arrange appropriate Gigabit Ethernet Service thru the KIH2 contract, the services could not be arranged until May 2011 with a service start date of October 2011. This caused MCS to need both the Form 471 Filing Window Waiver and the FRN split be granted.**

**Special Circumstance #2: - New Fact**

**Violation of Lowest Corresponding Price Rule**

- A. By increasing the rate to \$1.44 million per year, TWC was in violation of the Lowest Corresponding Price Rule codified at 47 C.F.R. § 54.511(b).
- i. TWC is currently providing 1 Gigabit Ethernet Service for Oldham County Schools in Crestwood Kentucky, a similarly situated school district, at a rate of \$1,100 per site.

TWC proposed the same service for Madison County Schools at a rate of \$7,500 per site.

- ii. TWC is offering an upgrade from 1 Gigabit to 10 Gigabit Ethernet Service for Oldham County Schools at a rate of \$1,800 per site.

As you can see from the above, TWC initially bid \$499,200 per year to continue to provide Ethernet Services to the 16 schools in MCS School District (a substantial increase from the prior contract price of \$91,812 charged by TWC for the same services in Funding Year 2010). TWC refused to sign a contract at the bid price 2 days before the Form 471 filing deadline, but demanded a price hike to \$1.44 million annually which is triple the bid price and fifteen times the rate charged for the same service in Funding Year 2010.

MCS filed the Form 471 Waiver Request within the filing window and diligently sought to find replacement services at a reasonable cost. Due to these efforts, a one year contract was obtained for \$598,752.00, resulting in a savings to the district of \$294,436.80 and to USAC of \$546,811.20.

Please let me know if additional information would be helpful. The loss of the \$389,188.80 reimbursement from USAC will significantly impact the district at a time when both state and federal funding for schools has been cut in recent years.

Attached you will find:

- 1) Attachment 1 - The Original Waiver request submitted 3/24/2011, confirmation number 2011324775172

- 2) Attachment 2 - The Update to the Original Waiver submitted on 9/7/2011, confirmation number 201197546985
- 3) Attachment 3 - the original TWC bid price documentation (\$2,600 per school)
- 4) Attachment 4 – TWC attempted price hike documentation submitted to MCS on March 22, 2011 two days before the window closed.

Thank you for considering the new facts related to the "delays that were caused circumstances beyond our control" and the violation of the Lowest Corresponding Price rule.

Sincerely,



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